

of the same upon the Residential Unit of such defaulting Owner. Any and all of such rights and remedies may be exercised at any time and from time to time, cumulatively or otherwise, by the Board.

Section 9.19 No Waiver. The failure of the Board to insist in any one or more instances upon the strict performance of any of the terms, covenants, conditions or restrictions of this Declaration, or to exercise any right or option herein contained, or to serve any notice or to institute any action, shall not be construed as a waiver or a relinquishment for the future of such term, covenant, condition or restriction, but such term, covenant, condition or restrictions shall remain in full force and effect. The receipt by the Board or Manager of any Assessment from an Owner with knowledge of the breach of any covenant hereof shall not be deemed a waiver of such breach, and no waiver by the Board or Manager of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the Board.

Section 9.20 Noise Attenuation; Floor Coverings.

(a) General Noise Guidelines. In the event that any Owner other than Declarant desires to modify any Improvement to such Owner's Residential Unit, including, without limitation, the floor coverings in such Owner's Residential Unit, then, in addition to all other requirements set forth herein, each Owner shall be, and remain, obligated to comply with the terms of this Section. Under all circumstances, whether as a result of modifications to the Residential Unit, or actions of an Owner within such Owner's Residential Unit, each Residential Unit shall be required to meet a minimum field noise isolation class ("NIC") of not less than fifty (50). In addition, each Residential Unit shall maintain a minimum Field Impact Isolation Class ("FIIC") of not less than 50, which standard applies specifically to noise associated with a Residential Unit's floor/ceiling assembly. Flooring materials (including hard-surface flooring underlayment materials) are classified by such FIIC measurements reflecting the degree of noise likely to be created by use of such materials (and, as described more fully in this Section below, such information is among the information required to be provided by an Owner at such Owner's sole expense before any consideration will be given to permitting replacement of flooring materials). If testing is required to confirm compliance with the foregoing standards (or any other noise standards set forth herein) same shall be conducted at the Owner's sole expense by a company that adheres to ASTM standards.

(b) Floor Coverings. With respect to carpeting installed in an Owner's Residential Unit by any Owner, padding shall be used, and such carpeting and padding shall be of a total weight of no less than that originally installed by Declarant. With respect to hardwood, marble, ceramic tile or other hard floor coverings, if permitted, such flooring shall be installed only with appropriate acoustic underlayment. The particular underlayment may be dictated by the nature of the floor covering. It shall remain the responsibility of each Owner to abide by the sound and noise reduction requirements set forth in this Declaration. It shall be required for any such Owner contemplating the installation of hardwood flooring, marble, ceramic tile or other hard floor coverings on the floor directly above a Residential Unit owned by another Owner, to request the Association's approval to permit the Owner to install same. Under no circumstances shall any Owner modify, alter or impair the floor/ceiling assembly of any Residential Unit. Any Owner desiring to install hard-surface flooring in any Residential Unit to replace any originally-installed flooring shall provide at such Owner's sole expense the following information to the Association for its reference in connection with its review of any request to permit the installation of such hard-surface flooring (subject to the waiver by the Association of the requirement that any particular materials or information be submitted):

(i) Information, including, if appropriate, construction plans and/or drawings, clearly indicating the type of flooring to be installed and the underlayment to be provided to mitigate impact noises such as foot-falls. The information must clearly identify all materials, their composition, and thickness. This information, including any plans and/or drawings, must be approved, at Owner's sole expense, by the resilient underlayment manufacturer for acoustical and structural integrity and performance and compliance with the acoustical requirements of this Declaration;

(ii) A copy of the installation instructions from the resilient underlayment manufacturer, which instructions shall be followed by the installing contractor;

(iii) The name, qualifications, and experience of the contractor who will install the hard-surface flooring and resilient underlayment, with a listing of such contractor's experience in the installation of floors utilizing impact installation materials; and

(iv) Evidence that the newly-installed flooring will not create greater noise impacts than the test results for the floor/ceiling assembly yielded when tested as described above.

(c) Noise Reduction. Acoustical privacy is in the mutual interest and benefit of all Owners, lessees and other occupants of the Properties. Acoustical privacy can only be achieved through understanding and compliance with certain limitations and restrictions. It is recognized that total isolation from an adjacent Residential Unit in a manner comparable to a single-family residence is difficult if not impossible to attain. There will usually be some awareness of one's neighbors. Efforts have been made in the basic design of the Properties to alleviate airborne noise, structure-borne noise and impact noise transmission from and to each Residential Unit. The design and construction of the Properties attempt to meet the standards and criteria imposed by the applicable governmental authorities related to sound insulation to the extent permitted by construction practices today. Modification of design of the structures or related components thereof by any Owner, or installation of noise generating instruments or equipment, could then alter the resultant expected isolation. The following restrictions are intended to maximize the acoustical privacy of all Owners, lessees and other occupants of the Properties.

(i) Impacts from Improvements; Noise Study. Any improvement, equipment, or activity which may create noise impacts for any Residential Unit or Common Elements shall be subject to the strict noise reduction requirements and guidelines set forth herein and/or in any guidelines adopted by the Association from time to time (the "Noise Guidelines"). The Board shall have the right to request that any Owner desiring to install any such improvements or equipment submit the results of a noise study prepared by a qualified consultant reasonably acceptable to the Architectural Review Committee or the Board, as applicable.

(ii) Sound System Loudspeakers and Pianos. Prior to attaching sound system loudspeakers to ceilings, walls, shelves or cabinets in a Residential Unit, and prior to the placement of a piano in a Residential Unit, the Owner, lessee or other occupant of said Residential Unit shall submit a written description to the Association of the measures that the Owner intends to take to ensure that said equipment or instrument shall not disturb the Owners, lessees and other occupants of the Properties (the "Noise Reduction Measures"). In regard to pianos, the concentrated weight on each caster leg of the piano can result in vibrational energy transfer at these localized contact points that is disturbing to other Residential Unit occupants. This is frequently the case, regardless of whether carpeting and padding exist. Therefore, appropriate Noise Reduction Measures may include, among other things, installing a ½" neoprene waffle load distribution plate or pad which has been a solution in many cases. The Association shall review

the proposed Noise Reduction Measures submitted by an Owner, lessee or other occupant of a Residential Unit and, if in its sole discretion, determines that said measures will be adequate to minimize noise, the Association shall provide written notice of approval to said Owner, lessee or occupant within thirty (30) days of receipt of the Noise Reduction Measures. If the Association, in its sole discretion, determines that the Noise Reduction Measures are inadequate, then the Owner shall be prohibited from making the desired installation. If the Association fails to provide written notice to the Owner, lessee or occupant within said sixty (60) day period, it shall be conclusively presumed that the Association has not approved the Noise Reduction Measures.

(iii) Plumbing Lines and Fixtures. If the Association approves replacement of any plumbing lines and fixtures within a Residential Unit, such plumbing lines and fixtures shall be vibration isolated consistent with the existing isolation.

(iv) Other Devices and Decorations. Many other devices and decorations or uses or misuses thereof, can likewise be the cause of unacceptable sound or vibration in adjacent (along side, above or below as the case may be) Residential Units, including, but not limited to, rotating, oscillating or vibrating devices. The Residential Unit Owners are forewarned and on notice that the criteria for acoustical privacy set forth herein, shall apply for any condition resulting in annoyance and complaint by other Residential Unit occupants within the Properties. Without limiting any other guidelines or restrictions now or hereafter affecting the Properties, no Owner or other person (other than Declarant) shall install or permit the installation of any therapeutic spa or similar device or equipment, whether portable or otherwise, without the prior written approval of the Architectural Review Committee. Any installed shelving or hanging pictures shall only be installed or hung with toggle bolts into the drywall. No Owner or other person shall fasten shelving or hanging pictures directly to studs.

(v) Indemnity. In the event that any flooring installation by an Owner does not comply with the sound attenuation requirements set forth herein, irrespective of any approval by the Association, the non-complying Owner shall indemnify, defend and hold harmless Declarant and the Association from any claims for defects, damages, liabilities, costs, and/or expenses (including reasonable attorneys' fees) arising out of, caused by, or associated with such non-compliance.

(vi) Noise Field Testing. In the event a complaint is made for non-compliance with the Noise Guidelines, the Board may retain the services of a recognized acoustical engineer to field test the area of complaint. The costs shall be chargeable to the complaining party in the event the field test shows that conditions meet the criteria of the applicable guidelines. If such field tests shows non-compliance, then the costs of the testing shall be borne by the offending party. In the event an Owner fails to comply with the provisions of this Section or any Noise Guidelines (a "Noise Violation"), the Association shall have the right, after Notice and Hearing and reasonable opportunity to cure such Noise Violation as determined by the Board pursuant to this Section, to enter into the Owner's Residential Unit for the purpose of remedying the Noise Violation. The Association shall not be liable for trespass in connection with such entry. At any hearing on a noise issue, the Owner will have an opportunity to discuss with the Board the merits of the claims set forth in the Association's original notice of Noise Violation, and the Board will determine what action, if any, needs to be taken by the Owner to remedy the Violation and the time within which it must be accomplished. The cost to the Association of remedying such Owner's failure to comply with the provisions of this Section, as well as any damages suffered by the Association with respect thereto, shall be assessed to the Owner as a Specific Assessment, enforceable in the manner provided in this Declaration.